PUBLIC LAW BOARD NO. 2529

Joseph Lazar, Referee

AWARD NO. 5
CASE NO. 5

PARTIES TO DISPUTE ) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES and FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM:

1. That the Carrier violated the Agreement when they refused to permit Trackman R. E. Vaughn to resume duties April 22, 1980 after having been released from medical treatment.

2. That the Carrier shall compensate Trackman R. E. Vaughn for loss of earnings suffered between April 23, 1980 and May 19, 1980.

FINDINGS: By reason of the Memorandum of Agreement signed November 16, 1979, and upon the whole record and all the evidence, the Board finds that the parties herein are employe and carrier within the meaning of the Railway Labor Act, as amended, and that it has jurisdiction.

On April 20, 1980, Claimant was injured in an off-duty automobile accident. The Doctor treated him for sprain of cervical muscles, and the Doctor saw him again on April 22, 1980, when he was released for work and full activity. On April 23, 1980, Claimant reported for service wearing a neck brace in which he had been placed by the Doctor. Claimant, although he presented the Doctor's release, was informed by his Foreman that he would not be permitted to return to service for medical reasons and that he should have the Doctor furnish the necessary medical records to the Carrier's Chief Surgeon, and that thereafter the Chief Surgeon would determine whether or not Claimant should be returned to service.

On May 18, 1980, Claimant furnished the requested medical records. Such records were promptly reviewed by the Chief Surgeon, and the Claimant was returned to service the next day, May 19, 1980. The Claim here is for loss of earnings suffered between April 23, 1980 and May 19, 1980, and is based upon the language of Rule 32 of the Parties' Agreement, with the terms relied upon reading:

> "An employe injured will be permitted to return to work promptly upon being released from medical treatment, and his right to do so will not be prejudiced because of litigation or failure otherwise to reach a settlement as a result of such injury."

The Carrier argues that this language specifically applies to employes injured or becoming ill on duty and has no application where an employe was injured off duty as in the instant case. The manifest intention of the Parties as expressed in the language of their agreement is, of course, most likely to be revealed in the whole language of the Rule rather than in specific terms taken out of context. The Rule 32, taken as a whole, reads:

> "Rule 32--INJURIES--SICKNESS
>
> An employe injured or becoming ill on duty, or in the course of his employment shall be given prompt medical attention. In the event such injured or ill employe is working or stationed at a point removed from where medical attention can be obtained, the Company will provide means of transportation to secure treatment.
>
> An employe injured will not be required to render any reports or attend investigations until he has been provided with and released from medical treatment.
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> A copy of any accident or injury report will be furnished to the employe rendering same upon request.
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> An employe injured will be permitted to return to work promptly upon being released from medical treatment and his right to do so will not be prejudiced because of litigation or failure otherwise to reach a settlement as a result of such injury."

The language of the fourth paragraph is relied upon by Claimant. The first three paragraphs of the rule expressly contemplate injuries or sickness of an employee on duty or in the course of employment. Paragraph four concludes with the clause, "...and his right to do so will not be prejudiced because of litigation or failure otherwise to reach a settlement as a result of such injury." Does "such injury" contemplate an off-duty injury? In view of the context of paragraphs 1, 2, and 3, and in view of the possibility of litigation and settlement expressed, which appear to relate to the employment relationship with the Carrier, it does not seem reasonable to believe that the contracting parties to Rule 32 intended that "such injury" meant off-duty injury. It is held, accordingly, that the language of Rule 32 relied upon by Claimant means "an employee injured or becoming ill on duty, or in the course of employment." The claim, accordingly, lacks agreement support.

The record is silent concerning the delay between April 23, 1980 and May 18, 1980 in Claimant's furnishing to the Carrier the required information.

The evidence of record is clear, and the connection is apparent, between the accident involving Claimant on April 20, 1980, and the wearing of the neck brace by Claimant on April 23, 1980. It was not unreasonable to believe that the wearing of the neck brace at that time indicated the possibility of a major and not a minor injury requiring additional information. Although Claimant had a release from his personal Doctor, the Carrier's responsibilities under the law did not cease. The record calls for the conclusion that the Carrier was not arbitrary and did not discriminate against Claimant, or act in bad faith in the circumstances of this case.

A W A R D

1. The Carrier is not in violation of the Agreement.

2. The claim is denied.

JOSEPH LAZAR, CHAIRMAN AND NEUTRAL MEMBER

S. E. FLEMING, EMPLOYE MEMBER

B. J. MASON, CARRIER MEMBER

DATED: 10-19-81